

The legal order of the EU

The constitution of the EU described above, and particularly the fundamental values it embodies, can be brought to life and given substance only through Union law. This makes the EU a legal reality in two different senses: it is created by law and is a community based on law.

THE EU AS A CREATION OF LAW AND A COMMUNITY BASED ON LAW

This is what is entirely new about the EU, and what distinguishes it from earlier attempts to unite Europe. It works not by means of force or subjugation but simply by means of law. Law is intended to achieve what 'blood and iron' have for centuries failed to bring about. For only unity based on a freely made decision can be expected to last: unity founded on the fundamental values such as freedom and equality, and protected and translated into reality by law. That is the insight underlying the Treaties that created the European Union.

However, the EU is not merely a creation of law but also pursues its objectives purely by means of law. It is a community based on law. The common economic and social life of the peoples of the Member States is governed not by the threat of force but by the law of the Union. This is the basis of the institutional system. It lays down the procedure for decision-making by the Union institutions and regulates their relationship to each other. It provides the institutions with the means — in the shape of regulations, directives and decisions — of enacting legal instruments binding on the Member States and their citizens. Thus the individuals themselves become a main focus of the Union. Its legal order directly affects their daily life to an ever-increasing extent. It accords them rights and imposes obligations on them, so that as citizens both of their State and of the Union they are governed by a hierarchy of legal orders — a phenomenon familiar from federal constitutions. Like any legal order, that of the EU provides a self-contained system of legal protection for the purpose of recourse to and the enforcement of Union law. Union law also defines the relationship between the EU and the Member States.

The Member States must take all appropriate measures to ensure fulfilment of the obligations arising from the Treaties or resulting from action taken by the institutions of the Union. They must facilitate the achievement of the EU's tasks and abstain from any measure that could jeopardise the attainment of the objectives of the Treaties. The Member States are answerable to the citizens of the EU for any harm caused through violations of Union law.

THE LEGAL SOURCES OF UNION LAW

The term 'legal source' has two meanings: in its original meaning, it refers to the reason for the emergence of a legal provision, i.e. the motivation behind the creation of a legal construct. According to this definition, the 'legal source' of Union law is the will to preserve peace and create a better Europe through closer economic ties, two cornerstones of the EC. In legal parlance, on the other hand, 'legal source' refers to the origin and embodiment of the law.

SOURCES OF UNION LAW

1. PRIMARY LEGISLATION

Union Treaties — General principles of law

2. THE EU'S INTERNATIONAL AGREEMENTS

4. GENERAL PRINCIPLES OF LAW

5. CONVENTIONS BETWEEN THE MEMBER STATES

Coreper decisions — International agreements

3. SECONDARY LEGISLATION

Legislative acts

Regulations — Directives — Decisions

Non-legislative acts

Delegated acts — Implementing acts

Other acts

Recommendations and opinions — Interinstitutional agreements —

THE EU FOUNDING TREATIES AS THE PRIMARY SOURCE OF UNION LAW

The first source of Union law in this sense is the EU founding Treaties, with the various annexes, appendices and protocols attached to them, and later additions and amendments. These founding Treaties and the instruments amending and supplementing them (chiefly the Treaties of Maastricht, Amsterdam, Nice and Lisbon) and the various Accession Treaties contain the basic provisions on the EU's objectives, organisation and *modus operandi*, and parts of its economic law. They thus set the constitutional framework for the life of the EU, which is then fleshed out in the Union's interest by legislative and administrative action by the Union institutions. The Treaties, being legal instruments created directly by the Member States, are known in legal circles as primary Union law.

THE EU LEGAL INSTRUMENTS AS THE SECONDARY SOURCE OF UNION LAW

Law made by the Union institutions through exercising the powers conferred on them is referred to as secondary legislation, the second important source of EU law.

It consists of legislative acts, delegated acts, implementing acts and other legal acts. 'Legislative acts' are legal acts adopted by ordinary or special legislative procedure (Article 289 TFEU). 'Delegated acts' are non-legislative acts of general and binding application to supplement or amend certain non-essential elements of a legislative act. They are adopted by the Commission; a legislative act must be drawn up explicitly delegating power to the Commission for this purpose. The objectives, content, scope and duration of the delegation of power are explicitly defined in the legislative act concerned. This delegation of power can be revoked by the Council or the European Parliament at any time. A delegated act may enter into force only if no objection has been raised by the European Parliament or the Council within a period set by the legislative act (Article 290 TFEU). 'Implementing acts' are an exception to the principle whereby all the measures required to implement binding EU legal acts are taken by the Member States in accordance with their own national provisions. Where uniform conditions are needed for implementing legally binding EU acts, this is done by means of appropriate implementing acts, which are generally adopted by the Commission, and, in certain exceptional cases, by the Council. However, the European Parliament and the Council lay down in advance the rules and general principles concerning the mechanisms for control by Member States of the Commission's exercise of implementing powers (Article 291 TFEU). Finally, there is a whole set of 'other legal acts' which the Union institutions can use to issue non-binding measures and statements or which regulate the internal workings of the EU or its institutions, such as agreements or arrangements between the institutions, or internal rules of procedure.

These legal acts can take very different forms. The most important of these are listed and defined in Article 288 TFEU. As binding legal acts, they include both general and abstract legal provisions on the one hand and specific, individual measures on the other. They also provide for the Union institutions to issue non-binding statements. This list of acts is not exhaustive, however. Many other legal acts do not fit into specific categories. These include resolutions, declarations, action programmes or White and Green Papers. There are considerable differences between the various acts in terms of the procedure involved,

their legal effect and those to whom they are addressed; these differences will be dealt with in more detail in the section on the 'means of action'.

The creation of secondary Union legislation is a gradual process. Its emergence lends vitality to the primary legislation deriving from the Union Treaties, and progressively generates and enhances the European legal order.

INTERNATIONAL AGREEMENTS OF THE EU

A third source of Union law is connected with the EU's role at the international level. As one of the focal points of the world, Europe cannot confine itself to managing its own internal affairs; it has to concern itself with economic, social and political relations with the world outside. The EU therefore concludes agreements in international law with non-member countries ('third countries') and with other international organisations; these range from treaties providing for extensive cooperation in trade or in the industrial, technical and social fields, to agreements on trade in particular products.

Three kinds of agreement between the EU and non-member countries are particularly worth mentioning.

Association agreements

Association goes far beyond the mere regulation of trade policy and involves close economic cooperation and wide-ranging financial assistance from the EU